

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

NATIONAL INDEMNITY COMPANY,

Plaintiff,

vs.

PROGRESSIVE CASUALTY INSURANCE
COMPANY; PROGRESSIVE MAX
INSURANCE COMPANY f/k/a
PROGRESSIVE MUTUAL INSURANCE
COMPANY; and PEERLESS INSURANCE
COMPANY, as successor-in-interest to FIRST
OF GEORGIA INSURANCE COMPANY,

Defendants.

8:22CV200

**ORDER ON
STIPULATED MOTION DISMISSING
PEERLESS INSURANCE COMPANY
WITH PREJUDICE**

This case is now before the Court on the Stipulated Motion Dismissing Peerless Insurance Company by plaintiff National Indemnity Company (NICO) and defendant Peerless Insurance Company, as successor in interest to First of Georgia Insurance Company (Peerless). [Filing 76](#). In this Stipulated Motion, signed only by counsel for NICO and Peerless, these parties stipulate to and move the Court for an order dismissing Peerless with prejudice, with each party to pay its own costs. [Filing 76 at 1](#). These parties represent that defendant Progressive Casualty Insurance Company confirmed it has no objections to their motion. [Filing 76 at 1](#). The Stipulated Motion contains no such representation as to the position of defendant Progressive Max Insurance Company.

[Federal Rule of Civil Procedure 41\(a\)](#) provides in pertinent part for dismissal without a court order if the plaintiff files “a stipulation of dismissal signed by all parties who have appeared.” [Fed. R. Civ. P. 41\(a\)\(1\)\(A\)\(ii\)](#). The Stipulated Motion filed by NICO and Peerless did not satisfy this requirement. Consequently, a court order was required, but “on terms that the court considers proper.” [Fed. R. Civ. P. 41\(a\)\(2\)](#). The Court considered it proper to wait the time provided in [NECivR 7.1\(b\)](#) and (c) for the filing of any opposition or reply before ruling on the Stipulated

Motion to be sure that all parties who have appeared did in fact agree to the dismissal of defendant Peerless or waived any objection. The representation of NICO and Peerless that one of the remaining defendants did not object is not sufficient to satisfy the explicit requirements of [Federal Rule of Civil Procedure 41\(a\)\(1\)\(A\)\(ii\)](#). The time for any opposition or reply has now run.

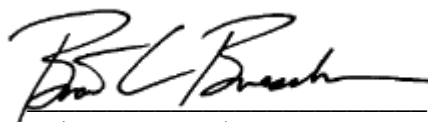
The Court notes that a Stipulated Motion Dismissing Progressive Casualty Insurance Company and Progressive Max Insurance Company by NICO and defendants Progressive Casualty Insurance Company (Progressive Casualty) and Progressive Max Insurance Company (Progressive Max) has also been filed. [Filing 77](#). This Stipulated Motion is signed only by counsel for NICO, Progressive Casualty, and Progressive Max, and these parties represent that defendant Peerless has no objections to their motion. [Filing 77 at 1](#). Because that Stipulated Motion also does not comply with the explicit requirements of [Federal Rule of Civil Procedure 41\(a\)\(1\)\(A\)\(ii\)](#), the Court will not rule on that Stipulated Motion until the time for any opposition and reply has run. See [Fed. R. Civ. P. 41\(a\)\(2\)](#); NECivR [7.1](#)(b) and (c).

At this time,

IT IS ORDERED that the Stipulated Motion Dismissing Peerless Insurance Company, [Filing 76](#), is granted, and defendant Peerless Insurance Company, as successor in interest to First of Georgia Insurance Company is dismissed with prejudice, with each party to pay its own costs.

Dated this 9th day of August, 2023.

BY THE COURT:

A handwritten signature in black ink, appearing to read 'B. C. Buescher', written over a horizontal line.

Brian C. Buescher
United States District Judge